

Jan 26.
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A
REPORT
OF THE
TRIAL
OF

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George Lidzwell and Thomas Prior, Esqrs.

UPON AN INFORMATION,

FILED EX OFFICIO,

BY HIS MAJESTY'S ATTORNEY GENERAL,

FOR SENDING AND DELIVERING

A CHALLENGE

TO

CHOLMELEY DERING, ESQ.

COLONEL OF THE ROMNEY FENCIBLES.

BY

WILLIAM RIDGEWAY, Esq.

BARRISTER AT LAW.

Dublin:

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Rec. Jan. 19, 1906.

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REPORT

OF THE

TRIAL, &c. &c.

*The following Information was filed by his Majesty's
ATTORNEY GENERAL, ex officio, against the
Defendants, George Lidwell and Thomas Prior,
Esqrs.*

As of Michaelmas Term in the 40th Year of the reign of
our Sovereign Lord George the Third, by the Grace of
God, of Great Britain, France and Ireland, King, De-
fender of the Faith and so forth, and in the Year of our
Lord God, 1799.

King's County, } BE it remembered, that the Right
to wit. } Honourable John Toler, Attorney General,
for our said Lord the King, of this kingdom of Ireland,
who, for our said Lord the King, in this behalf prose-
cute, cometh here into the Court of our said Lord the King,
before the King himself, at the King's Courts in *Dublin*,
on the 7th day of *November*, in this term, and for the said
Lord the King, gives the Court here to understand and be
informed, that *George Lidwell* of *Drummard* in the county
of *Tipperary*, Esq; being a person of a wicked and ma-
licious mind and disposition, and a common duellist, fighter,

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and

and disturber of the peace of our said Lord the King, and not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and unlawfully, wickedly and maliciously intending and designing, not only to disquiet and terrify *Cholmeley Deering*, Esq; Colonel of the New Romney, or Duke of York's own regiment of Fencible Light Dragoons, a regiment of cavalry then and there belonging to, and in the service of our said Sovereign Lord the King, but also to do great bodily harm and mischief to the said *Cholmeley Deering*, and him maliciously, violently and wickedly to kill and murder, on the 8th day of *September*, in the 39th year of the reign, &c. with force and arms, at *Tullamore* in the county aforesaid, did unlawfully wickedly and maliciously provoke, (and as much as in him the said *George Lidwell* lay, did endeavour to move, excite, instigate and provoke) him the said *Cholmeley Deering* to fight a duel with and against him the said *George Lidwell*; and that he the said *George Lidwell* a certain challenge in the name of the said *George Lidwell*, in the form of a letter, to the said *Cholmeley Deering* directed, unlawfully to fight a duel with and against him the said *George Lidwell*, did then and there maliciously, wickedly, and unlawfully write, and cause to be written, which said challenge so as aforesaid written and directed, he the said *George Lidwell* afterwards, to wit, on the said 9th day of *September*, in the year aforesaid, at *Tullamore* aforesaid, in the county aforesaid, maliciously, wickedly and unlawfully to the said *Cholmeley Deering*, did send and deliver, and cause to be sent and delivered, to the great damage and terror of him the said *Cholmeley Deering*, in contempt of our said Lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity :

And the said Attorney General of our said Lord the King, for our said Lord the King, giveth the Court here further to understand and be informed, that the said *George Lidwell* being a person of a wicked and malicious mind and disposition, and a common duellist, fighter and disturber of the peace of our said Lord the King, and not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and wickedly, unlawfully and maliciously devising and intending to move, incite, instigate and provoke the said *Cholmeley Deering* to fight

fight a duel with him the said *George Lidwell*, and thereby to kill and murder him the said *Cholmeley Deering*, and to cause him the said *Cholmeley Deering* to break the peace of our said Lord the King, afterwards to wit, upon the 9th day of *September* in the 39th year of the reign aforesaid, at *Tullamore* aforesaid, in the *King's* county aforesaid, with force and arms, did unlawfully, wickedly and maliciously send, and cause to be sent and delivered a certain written challenge of and from him the said *George Lidwell*, to the said *Cholmeley Deering* (in the peace of God and of our said Lord the King then and there being) unlawfully to fight a duel with and against him the said *George Lidwell*, to the great damage and terror of him the said *Cholmeley Deering*, in contempt of our said Lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity:

And the said Attorney General of our said Lord the King, for our now said Lord the King, giveth the Court here further to understand and be informed, that the said *George Lidwell*, being such evil disposed person and disturber of the peace of our said Lord the King as aforesaid; and designing and intending to do great bodily harm and mischief to the said *Cholmeley Deering*, and wickedly, unlawfully and maliciously devising and intending to move, incite, instigate and provoke the said *Cholmeley Deering* to fight a duel with him the said *George Lidwell*, and to cause him the said *Cholmeley Deering* to break the peace of our said Lord the King, upon the 9th day of *September*, in the 39th year of the reign aforesaid, at *Tullamore* in the *King's* county aforesaid, with force and arms, did unlawfully, wickedly and maliciously endeavour to provoke and incite, as much as in him the said *George Lidwell* lay, the said *Cholmeley Deering* (in the peace of God and our said Lord the King then and there being) unlawfully to fight a duel with and against the said *George Lidwell*, to the great damage of the said *Cholmeley Deering*, in contempt of our said Lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity:

And the said Attorney General of our said Lord the King, for our said Lord the King, giveth the Court here further to understand and be informed, that the said

George Lidwell, being such evil disposed person and disturber of the peace of our said Lord the King as aforesaid, and designing and intending to do great bodily harm and mischief to the said *Cholmeley Deering*, afterwards, to wit, on the said 9th day of *September* in the 39th year aforesaid, at *Tullamore* in the *King's* county aforesaid, in pursuance of and for completing his said last-mentioned malicious and wicked intent and design, with force and arms, did unlawfully, wickedly and maliciously provoke and incite and challenge the said *Cholmeley Deering* (in the peace of God and of our said Lord the King then and there being) unlawfully, wickedly and maliciously to fight a duel with and against the said *George Lidwell*, to the great damage of him the said *Cholmeley Deering*, in contempt of our said Lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity:

And the said Attorney General of our said Lord the King, for our said Lord the King, giveth the Court here further to understand and be informed, that the said *George Lidwell*, being such evil disposed person and disturber of the peace of our said Lord the King as aforesaid, and intending to do great bodily harm and mischief to the said *Cholmeley Deering*, and to cause him to break the peace of our said Lord the King, afterwards, to wit, on the 9th day of *September*, in the 39th year of the reign aforesaid, at *Tullamore* in the *King's* county aforesaid, with force and arms, did unlawfully, wickedly and maliciously provoke and incite the said *Cholmeley Deering* (in the peace of God and of our said Lord the King then and there being) unlawfully to fight a duel with and against him the said *George Lidwell*, to the great damage of the said *Cholmeley Deering*, in contempt of our said Lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King his crown and dignity:

And the said Attorney General of our said Lord the King, for our said Lord the King, giveth the Court here further to understand and be informed, that the said *George Lidwell*, being such evil disposed person and disturber of the peace of our said Lord the King as aforesaid, and designing and intending to do great bodily harm and mischief to the said *Cholmeley Deering*, and to cause him to break the peace of our said Lord the King, afterwards, to wit, on the said 9th day

9th day of *September* in the 39th year of the reign aforesaid, at *Tullamore* in the *King's* county aforesaid, with force and arms, did unlawfully, wickedly and maliciously (as much as in him the said *George Lidwell* lay) endeavour to move, incite, instigate and provoke him the said *Cholmeley Deering*, unlawfully to challenge and fight a duel with and against him the said *George Lidwell*, to the great damage of the said *Cholmeley Deering*, in contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity :

And the said Attorney General of our said Lord the King, for our said Lord the King, giveth the Court here further to understand and be informed, that the said *George Lidwell*, being such evil disposed person and disturber of the peace of our said Lord the King, as aforesaid, and designing and intending to do great bodily harm to the said *Cholmeley Deering*, and to cause him the said *Cholmeley Deering* to break the peace of our said Lord the King aforesaid, to wit, on the said 9th day of *September* in the 39th year of the reign aforesaid, at *Tullamore* in the *King's* county aforesaid, in pursuance of, and for completing his said last-mentioned malicious and wicked intent, and design with force and arms, did unlawfully, wickedly and maliciously provoke and challenge, and as much as in him the said *George Lidwell* lay, endeavour to move, incite, and instigate him the said *Cholmeley Deering* (in the peace of God, and of our said Lord the King, then and there being) unlawfully, wickedly, and maliciously to fight a duel with and against one *George Lidwell*, to the great damage of him the said *Cholmeley Deering*, in contempt of our said Lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his Crown and dignity :

And the said Attorney General of our said Lord the King, for our said Lord the King, giveth the Court here further to understand and be informed, that *Thomas Prior* of *Rathdowney*, in the *Queen's* county, Esq; on the 9th day of *September*, in the 39th year of the reign aforesaid, was High Sheriff of the *Queen's* county aforesaid, and that being such sheriff as aforesaid, and being an evil disposed person and disturber of the peace of our said Lord the King, and disregarding the duty of his said office and station, and intending to procure great bodily harm and mischief

chief to be done to the said *Cholmeley Deering*, Esq; then and there Colonel of the *New Romney*, or Duke of York's own regiment of fencible Light Dragoons, a regiment of cavalry then and there belonging to, and in the service of, our said Sovereign Lord the King, and to move, incite, and provoke the said *Cholmeley Deering* unlawfully to fight a duel with and against the said *George Lidwell*, on the said 9th day of *September*, in the 39th year of the reign aforesaid, at *Tullamore* in the King's county aforesaid, with force and arms, did unlawfully, wickedly and maliciously deliver and cause to be delivered, a certain challenge of and from the said *George Lidwell*, in the name of the said *George Lidwell*, in the form of a letter, to the said *Cholmeley Deering* (in the peace of God and of our said Lord the King, then and there being) unlawfully to fight a duel with and against him the said *George Lidwell*, to the great damage of the said *Cholmeley Deering*, in contempt of our said Lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his Crown and dignity:

And the said Attorney General of our said Lord the King, for our said Lord the King, giveth the Court here further to understand and be informed, that the said *Thomas Prior*, being such person as aforesaid, and intending to procure great bodily harm and mischief unto the said *Cholmeley Deering*, and to move, incite and provoke the said *Cholmeley Deering* unlawfully to fight a duel with and against the said *George Lidwell*, afterwards, to wit, on the 9th day of *September*, in the 39th year of the reign aforesaid, at *Tullamore* in the King's county aforesaid, with force and arms, did wickedly and maliciously deliver and cause to be delivered, a certain written challenge of and from the said *George Lidwell* to the said *Cholmeley Deering*, (in the peace of God and of our said Lord the King, then and there being) unlawfully to fight a duel with and against him the said *George Lidwell*, to the great damage of the said *Cholmeley Deering*, in contempt of our said Lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his Crown and dignity:

And the said Attorney General of our said Lord the King, for our now said Lord the King, giveth the Court further to understand and be informed, that the said *Thomas Prior*, being such person as aforesaid, and intending to procure

cure great bodily harm and mischief to be done to the said *Cholmeley Deering*, and to move, incite and provoke the said *Cholmeley Deering*, unlawfully to fight a duel with and against the said *George Lidwell*, afterwards to wit, on the 9th day of *September*, in the said 39th year of the reign aforesaid, at *Tullamore*, in the *King's* county aforesaid, with force and arms, did wickedly, unlawfully, and maliciously deliver and caused to be delivered a written challenge of and from the said *George Lidwell* to the said *Cholmeley Deering*, and did thereby unlawfully, wickedly and maliciously move, provoke, and incite the said *Cholmeley Deering* (in the peace of God and of our said Lord the King then and there being) unlawfully to fight a duel with and against the said *George Lidwell*, to the great damage of the said *Cholmeley Deering*, in contempt of our said Lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his Crown and dignity :

And the said Attorney General of our said Lord the King, for our said Lord the King, giveth the Court here further to understand and be informed, that the said *Thomas Prior*, being such person as aforesaid, and intending to procure great bodily harm and mischief to be done to the said *Cholmeley Deering*, and to move, incite and provoke the said *Cholmeley Deering* unlawfully to fight a duel with and against the said *George Lidwell*; afterwards to wit, on the 9th day of *September* in the 39th year of the reign aforesaid, at *Tullamore*, in the *King's* county aforesaid, with force and arms, did wickedly, unlawfully, and maliciously deliver and cause to be delivered a challenge as from and on the part of the said *George Lidwell* to the said *Cholmeley Deering*, (in the peace of God and of our said Lord the King, then and there being) unlawfully to fight a duel with and against him the said *George Lidwell*, to the great damage of the said *Cholmeley Deering*, in contempt of our said Lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his Crown and dignity :

And the said Attorney General of our said Lord the King, for our said Lord the King, giveth the Court here further to understand and be informed, that the said *Thomas Prior*, being such person as aforesaid, and intending to procure great bodily harm and mischief to be done

to

to the said *Cholmeley Deering*, and to incite and provoke the said *Cholmeley Deering*, unlawfully to fight a duel with and against the said *George Lidwell*, afterwards to wit, on the 9th day of *September*, in the 39th year of the reign aforesaid, at *Tullamore*, in the *King's* county aforesaid, with force and arms, did unlawfully, maliciously, and wickedly, move, provoke and incite the said *Cholmeley Deering*, (in the peace of God and of our said Lord the King then and there being) unlawfully to fight a duel with and against the said *George Lidwell*, to the great damage of the said *Cholmeley Deering*, in contempt of our said Lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his Crown and dignity:

And the said Attorney General of our said Lord the King, for our said Lord the King, giveth the Court further to understand and be informed, that the said *Thomas Prior*, being such person as aforesaid, and intending to procure great bodily harm and mischief to be done to the said *Cholmeley Deering*, and to cause him to break the peace of our said Lord the King, afterwards, to wit, on the 9th day of *September*, in the 39th year of the reign aforesaid, at *Tullamore*, in the *King's* county aforesaid, with force and arms, did unlawfully, wickedly and maliciously, (as much as in him lay) endeavour to move, incite, instigate and provoke him, the said *Cholmeley Deering*, unlawfully to fight a duel with and against him, the said *George Lidwell*, to the great damage of the said *Cholmeley Deering*, in contempt of our said Lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his Crown and dignity:

And the said Attorney General of our said Lord the King, for our said Lord the King, giveth the Court here further to understand and be informed, that the said *Thomas Prior*, being such person as aforesaid, and intending to procure great bodily harm and mischief to be done to the said *Cholmeley Deering*, and to cause him, the said *Cholmeley Deering*, to break the peace of our said Lord the King; afterwards to wit, on the 9th day of *September*, in the 39th year of the reign aforesaid, at *Tullamore*, in the *King's* county aforesaid, in pursuance of and for completing his said last-mentioned malicious and wicked intent and design,
with

with force and arms, did unlawfully, wickedly, and maliciously provoke, challenge, and as much as in him the said *Thomas Prior* lay, endeavour to move, incite, and instigate him, the said *Cholmeley Dering*, (in the peace of God, and our said Lord the king, then and there being, unlawfully, wickedly and maliciously, to fight a duel with and against the said *George Lidwell*, to the great damage of the said *Cholmeley Dering*, in contempt of our said Lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity.

The Defendants severally pleaded *not guilty*

Friday, the 2d day of *May*, having been appointed for the trial of the foregoing information, the Sheriff of the *King's* county returned his panel, from which the following jury was sworn:—

John Lloyd,
Thomas Bernard,
John Minchin,
Tho. Rider Pepper,
Jackson Wray Atkinson,
Robert Johnson,

John Percy,
John Spinner,
John Walsh,
Rob. James Enraght,
John Drought,
Manfel Andrews.

The ATTORNEY GENERAL stated the case for the prosecution, and after going through the several counts in the information as against Mr. *Lidwell*, for having sent the challenge in question, together with a letter which conveyed the challenge :

He then stated the other counts against Mr. *Prior*, for being the bearer of the said challenge.

The ATTORNEY GENERAL then observed, that if this were an ordinary case of sending a challenge (an offence to which the gentlemen of *Ireland* were sometimes charged with being too much familiarized) he should abstain from stating a case at large, and should proceed at once to call the witnesses.

But in this case there is something peculiar, which demands a particular statement.

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The Prosecutor, Colonel *Dering*, is colonel of the *Romney* Regiment of Fencibles, which had come to *Ireland* at an early period of our late unhappy disturbances, and has taken an active part in quelling those disturbances, and restoring the country to quiet.

During the course of the years 1798 and 1799, that regiment was quartered in the county of *Tipperary*, where they had rendered essential public service, and where, during the interval alluded to, the brother of the Defendant *Lidwell*, had been, on account of a recommendation from some persons in that country, admitted to the commission of a Cornet therein. Notwithstanding that those who recommended him had vouched for his good behaviour, it was not of long continuance; the peace of the regiment and the comforts of its society were soon interrupted by Cornet *Lidwell*, his misconduct gradually increased, instead of his being amended by the example of the correct manners of accomplished and well-bred Gentlemen of the corps, who at length became almost universally the objects of his insults and of his unprovoked outrage, not only in disobedience to the military orders of his superiors, but in violation of all gentlemanly decorum.

The officers struggled for a long time in vain to controul and to assuage him, and were extremely reluctant (in a country where the conduct of the *English* regiments has evinced that their universal study has been kindness and protection to its inhabitants) to take any step that could mortify the feelings even of an offending individual.

It would be unbecoming now, and foreign to the spirit of my instructions to allude to those misconducts, were they not become a necessary part of the case, as the crimes which are charged upon the Defendant, not only have arisen out of those misconducts, but have been attempted to be justified upon the supposed severity of treatment which has been the painful and necessary result of Cornet *Lidwell's* misconduct.

The Prosecutor, Colonel *Dering*, had scarcely a word of intercourse in his life with Cornet *Lidwell*, except on the ground of his military duty, he never was, nor could he have been an object for Colonel *Dering's* personal resentment. But in the excesses of the Cornet's misbehaviour, it at length became necessary to exhibit charges against him, which, with the unanimous consent of the regiment,
were

were forwarded by Colonel *Dering* to the commanding officer of the district, Sir *James Duff*, for the purpose of a Court Martial, accompanied by a memorial to the LORD LIEUTENANT, signed by every Officer with the Regiment, leaving it to the option of the General and his Excellency to direct the mode of proceeding.

The memorial, sanctioned by the universal opinion of the corps, was a document of such authority that the General forwarded it to his Excellency the LORD LIEUTENANT; in consequence of which, that great man and most experienced military character, did obtain the King's order, that Cornet *Lidwell* should be dismissed the service.

Here, then, is the *head* and *front* of that offending which has induced the resentment and vengeance of the Defendant *George Lidwell*, to commit that offence with which he at present stands charged, against Colonel *Dering*, because that he, as commanding officer of a regiment for whose discipline and subordination he was responsible, has presumed with the universal concurrence and desire of his officers, to make due representation of an offending individual, whose conduct was incompatible with that due order and subordination without which military bodies would be insupportable nuisances, not only to augment their own internal disorders, but rendering themselves obnoxious to that society for whose benefit and protection they are paid and maintained.

After the dismissal of Cornet *Lidwell*, an interval of a few days had elapsed, when Colonel *Dering*, in the month of *September* last, at his quarters in *Tullamore*, was informed by his servant at an early hour when he was dressing, that the High Sheriff of the *Queen's* county wished to see him immediately.

The Colonel, who conceived that the Sheriff might have had occasion for the troops under the Colonel's command, gave him immediate admittance, but to the Colonel's great surprise he was informed by this Sheriff, who thus gained admittance to his private apartment, that he, the Sheriff, came from Mr. *George Lidwell* to know if he Colonel *Dering*, would give Mr. *John Lidwell*, late Cornet *Lidwell*, gentlemanly satisfaction for the injury he had received in being dismissed the King's service, in consequence of a memorial forwarded by him, Colonel *Deering*; to which message the Colonel replied, "certainly not:" for that under the obligation which he felt himself, conjointly with the other officers of his regiment, he was bound not to give
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any such satisfaction as was alluded to, in fighting Mr. *Lidwell* under the circumstances in which he stood.

You will then allow me, said the Sheriff, to deliver to you a letter from Mr. *George Lidwell*. "I certainly will not," said the Colonel, "I have not the honour of his acquaintance, I have had no communication with him, and shall not receive such letter." "You will then," said the Sheriff, "allow me to read it to you;" "Certainly not," said the Colonel, giving him a strong hint of the necessity of his immediate departure, asking him at the same time, whether he had not gained admittance by intimating that he was the High Sheriff.

The High Sheriff then withdrew, and in the course of the same morning, the Regiment having been ordered out upon some rejoicing for public news; whilst the Colonel with the other Officers were on parade, the defendant and his brother passed them by together, he, the defendant, sneering as he passed.

When Colonel *Dering* returned home he found on his table two letters, one from the defendant *Lidwell*, and the other from the defendant *Prior*, (both of which letters will be proved to be of their respective hand writings) that from the defendant *Lidwell* conveying a direct challenge to fight on account of his brother's business, as if he had been unwarrantably dismissed by the Colonel's means, without the benefit of a trial, and the other from the Defendant *Prior*, desiring the Colonel to forward any commands he might have for *George Lidwell* to him, *Mr. Prior*.

It would be an insult to the understanding of any Jury, and particularly of a Jury of *Irish Gentlemen*, so conversant with the habits of their countrymen, to offer an argument seriously to prove that such a letter is a challenge to fight in the common acceptation of Gentlemen.

Long antecedent to this period, Colonel *Dering* had, amongst other matters of instruction from Sir *James Duff*, received his positive commands not to suffer himself, or any of his officers, to be committed in a personal quarrel with Cornet *Lidwell* or his family, on a subject of such importance to the good order of the army, well foreseeing their disposition and the obvious public inconvenience that would follow.

Were I at this moment addressing, not a grave court of criminal justice, but a court of Knight Errants, under
impressions

impressions of the wildest chivalry, there is nothing in the case that could have warranted the Defendant *Lidwell* in sending, or the prosecutor Colonel *Dering* in accepting of, or obeying the call of such a wanton challenge, from such an unprovoked aggressor.

It is scarcely decorous in one standing in my situation, to combat the justification that I hear is to be set up in this case; but I can scarcely suppose that it will be seriously urged, or that it will be offered, even in insinuation, to the jury, that this has been a justifiable indulgence of gentlemanly resentment, that should be entitled to favour, or that should warp them from the strictness of their duty.

In a false quarrel there is no true valour. An affected contempt of personal danger, in gratifying an unwarrantable, unfounded, and rash vengeance, is not that true and magnanimous feeling which should ever be actuated by a sense of honorable duty to the society in which we live.

As to the conduct of the prosecutor in this case, which has been regulated and sanctioned not only by the General who commanded him, but by the highest and most revered military character in this country, in making this appeal to the laws of the country, I will not offend my feelings, nor those of the Jury which I address, or of the auditory which surrounds me, by stooping to justify the course which has been taken in bringing this case before this great tribunal.

Exclusive of that sense of duty which your Lordships will inculcate as due to the laws, the Jury will recollect the pledged obligation of the prosecutor to his corps, as well as to that discipline and military subordination which at once would have been abandoned, if he had rashly yielded to any hasty impulse that provocation might have excited.

If he had done so, he would have made a shameful surrender of that manly fortitude by which he has distinguished himself on the present occasion, in performing a painful duty, from which pusillanimity might shrink, but which the gallant feelings of a man of honor have boldly encountered.

CHOLMELEY

CHOLMELEY DEERING, Esq; sworn.

Q. You are an Officer in his Majesty's service ?

A. Yes, I am Colonel of the New Romney, (or Duke of York's own) regiment of Fencible Light Dragoons.

Q. Were you quartered in the town of Tullamore in the King's county, in the month of September last ?

A. I was.

Q. Did any thing particular occur with respect to the Defendant Mr. George Lidwell, Mr. Prior, or either of them ?

A. On Sunday morning, I think the 8th of September last, I was told by my servant, that the High Sheriff of the Queen's county wanted to see me; I sent in answer, that if he would excuse me being then dressing, I begged he would walk up; because I thought as Sheriff of a neighbouring county, he might have occasion for the troops under my command. Mr. Thomas Prior came into my chamber.—I see the Gentleman in the Court; he said, he came of a message from Mr. George Lidwell, to know, "whether I would give his brother, Mr. John Lidwell, the satisfaction of a Gentleman." I immediately answered, "certainly not," and at the same time added, "that our relative situations rendered it impossible, that I never had any personal quarrel with Mr. John Lidwell, and lamented that his conduct had been such as to render it impossible for any officer of the regiment to engage in a quarrel with him." Mr. Prior asked me "would I give him leave to deliver a letter." I said, "I would not take any letter from him;" I thought it might be from some of the Lidwell connection, and I did not wish to have any communication with them. Mr. Prior said, "surely you will let me read it to you," I said "I would not." I then observed to Mr. Prior, "If I am not mistaken, you called upon me as High Sheriff of the Queen's county." He said, he had, and I slightly hinted to him, that in that capacity, he did not seem to have any commands for me. Mr. Prior, after that hint withdrew.

Q. Did you see Mr. Prior, or Mr. George Lidwell afterwards ?

A. Shortly

A. Shortly after this conversation, we had orders to fire a feu-de-joie upon some public rejoicing. I went out and I think I saw Mr. *Prior*, Mr. *George Lidwell* and Mr. *John Lidwell*; the two latter walked up and down the parade, and I think Mr. *Prior* did so too; Mr. *George Lidwell* made a sneering countenance towards me. I sent to Major *Taylor* to warn him of the arrival of those men, that as they had not succeeded with me, they might attack some of the other members of the regiment. When the post came in, I received the letters which have been stated by the *Attorney General*. When I read them, the first impulse was to take no notice of them. But afterwards I sent them to Colonel *Littlehales*, requesting that he would lay them before the LORD LIEUTENANT. Those are the two letters (*producing them*) which I received that evening, with the *Tullamore* post-mark. In consequence of having sent them to Colonel *Littlehales*, I was ordered to *Dublin*.

MR. EDWARD WALSH sworn.

Q. Do you know Mr. *Thomas Prior* of *Rathdowney* in the *Queen's* county?

A. I do.

Q. Are you acquainted with his hand-writing?

A. I am.

Q. Do you believe this letter to be his hand-writing?

A. I do.

MR. JOHN COUZENS sworn.

Q. Do you know Mr. *George Lidwell* of *Drumard* in the county of *Tipperary*?

A. I do.

Q. Are you acquainted with his hand-writing?

A. I have received letters and bills of Exchange from him.

Q. Are you acquainted with his hand-writing?

A. I am acquainted with his hand-writing.

Q. Do you believe this letter to be his hand-writing?

A. I do.

Q. (By

Q. (By the Court. How are you acquainted with his hand-writing.

A. By receiving bills and letters from him.

Q. Have you ever seen him write ?

A. I do not recollect.)

Q. Do you know the person of Mr. *George Lidwell* ?

A. I do.

Q. Where does he live ?

A. At *Drumard* in the county *Tipperary*.

Q. Have you corresponded with him ?

A. I have received letters of his directed to another person who gave me power to open them.

Q. Were those letters upon business ?

A. He employed Mr. *Birch*, an Attorney, in some money dealings. I was an apprentice to Mr. *Birch*, and had directions to open his letters, and the letters I opened were upon Mr. *George Lidwell's* business.

Q. Upon what business ?

A. Various business respecting Mr. *Lidwell* and Mr. *Birch*.

Q. Mr. *Lidwell* was a client of Mr. *Birch* ?

A. He was.

Q. And upon what business were the letters ?

A. Law business and money business.

Q. Have you ever seen Mr. *George Lidwell* at Mr. *Birch's* house ?

A. I have.

Cross-Examined.

Q. Have you ever known Mr. *George Lidwell* to live out of this kingdom ?

A. I have not.

Q. Have you yourself ever lived out of this kingdom ?

A. I have not.

Q. Both of you have been resident in this kingdom ?

A. Yes.

Q. Will you swear positively, that you ever saw Mr. *George Lidwell* write ?

A. I will not.

Mr.

Mr. RICHARD BIRCH, sworn.

Q. Look at this letter, Sir; Whose hand-writing do you believe it to be?

A. I believe this to be the hand-writing of Mr. George Lidwell—But I am not well acquainted with his hand-writing.

Q. Have you ever seen him write?

A. I do not recollect to have seen him write more than once or twice.

Q. Have you ever received letters from him?

A. I have; and from my acquaintance of his hand-writing, I believe this to be his hand-writing.

Cross-Examined.

Q. How long is it since you saw him write?

A. It is two or three years since I saw him write?

Q. Is your belief formed more from a comparison of his hand-writing, than from seeing him write?

A. My belief is formed not merely from seeing him write; I have received letters and bills drawn by him: I form my opinion more from a comparison of the writings I have received from time to time.

Q. Mr. George Lidwell has always resided in this kingdom?

A. I believe so.

Q. You have always resided in this kingdom?

A. I have.

Q. Do you not believe there are many persons in this kingdom who could prove his hand-writing?

A. I suppose so.

The Counsel for the Defendants objected to the letter being read upon this evidence; contending, that since the case of *Algernon Sydney*, no papers have been received in evidence upon a comparison of hand-writing. In civil cases, and where the party resides abroad, evidence arising from a correspondence may be admitted;—but in a criminal case, and where the party resides within the kingdom, stricter evidence is required, and therefore there was no ground for reading the letter to the Jury.

Lord KILWARDEN, *Chief Justice*.---We are all of opinion, that the letter, upon the evidence given, is admissible to the Jury. It does not depend upon the principles which have been mentioned by the Counsel for the Defendants; because here is a witness who has *seen* Mr. Lidwell write, and has had a correspondence with him, from both of which he forms his belief.

Colonel DERING again examined.

Q. Did you receive both these letters upon the same day?

A. I received them both upon the same day.

Q. Where is *Dogberty's* Inn?

A. In *Tullamore*.

Q. A letter was offered to you in the morning?

A. Mr. Prior offered me a letter from Mr. George Lidwell in the morning, which I refused.

Q. (*By the Jury.*) Did you receive both these letters upon the same day that Mr. Prior waited upon you?

A. I did.

[*Here the Letters addressed to Col. DERING, were read.*]

“ SIR,

“ DURING your long persecution of my
 “ Brother, which I declare, on my honor, he not only
 “ concealed from me himself, but did every thing in his
 “ power to make others do, I resolved most firmly to ab-
 “ stain from any interference, for these reasons:—I knew,
 “ on the one hand, that no treatment, however severe,
 “ could subdue his mind to a base and unworthy com-
 “ pliance with your well-known tyrannical disposition;
 “ and, on the other, I did believe that you could never
 “ hurt his character, or wound his honour, except through
 “ the determination of a Court-Martial, whose decisions,
 “ in all military matters, I have been so much in the habit
 “ of respecting, that had the sentence of one been against
 “ him, I should not only judge it inexpedient to espouse his
 “ cause, but should have considered him an alien to me
 for

" for ever. But, Sir, you, knowing he had nothing to
" fear from so honorable a Tribunal, had recourse to the
" most sinister means to defeat his earnest application for
" an investigation, and now, availing yourself of the most
" unmanly circumstances, you decline giving him that
" redress that his injury demands. Therefore, Sir, with-
" out any other advantage over him, but that of not being
" degraded by being under your command, I hold myself
" bound to tell you, your conduct to him, in the first
" instance, has been tyrannic and insidious;—in the latter,
" unbecoming a man of honor or a soldier. Captain
" Prior, who undertakes the delivery of this, will receive
" any commands you may have to me in consequence.

" I am, Sir,

" &c. &c. &c.

" GEORGE LIDWELL.

" *Tullamore*, Sept. 8, 1799."

" SIR,

" I BEG leave to inform you that I shall
" wait in town until three o'clock, that you may address
" any commands you may have for me, in consequence of
" a Letter that you have received from Captain George
" Lidwell.

" I have the honor to be,

" Sir,

" Your obedient Servant,

" THOMAS PRIOR,

" *Dogberty's Inn*,

" Sunday morning."

MR. PRIME SERJEANT.—My Lords, we now offer to
give evidence of the conduct of Mr. *John Lidwell*, in the
regiment, to shew the Jury the ground of this trans-
gression.

The Counsel for the Defendants objected to such evidence
being given.

LORD KILWARDEN, Ch. J.---We think such evidence is not admissible in this case.

MR. ATTORNEY GENERAL.---My Lords, I entreat the Court to consider, whether the letters from Mr. *George Lidwell* have not made the conduct of *John Lidwell* evidence in this case admissible to the Jury. There may possibly be some evidence on the other side attempting to shew a justification of, or a provocation for, those letters. If we can shew that this matter was totally unprovoked, it will be an aggravation of the crime, the whole measure of which will be before the Court in case of a conviction.

LORD KILWARDEN, Ch. J.---In case of a conviction, if the Defendants offer any thing in mitigation, you may then answer them.

MR. ATTORNEY GENERAL.---My Lords, the letter which has been read says, "Your *tyrannical* conduct to my "brother," and charges Col. DERING with refusing him a court-martial. Now, we offer evidence to shew, there was no ground for this charge. If your Lordships conceive the evidence admissible for this purpose, we offer it.

COURT.---We do not think the evidence admissible for the purpose which has been mentioned.

MR. ATTORNEY GENERAL.---My Lords, we submit to the judgment of the Court, and we now produce evidence to shew the subsequent conduct of one of the Defendants.

Colonel DERING examined.

Q. Do you recollect seeing Mr. *George Lidwell*, after the transaction you have mentioned, at *Tullamore*?

A. At the time I expected this trial to come on last term, I came to *Dublin*.---I was walking in *Grafton-street*, and met Mr. *George Lidwell*.

The

The Counsel for the Defendant objected to this evidence, saying it was a subsequent transaction, and the subject of another enquiry.

The Counsel for the Crown replied, that it was evidence to shew *quo animo* the letter was written.

LORD KILWARDEN, Ch. J.—We think that a new crime cannot be given in evidence in support of any charge in the information. But subsequent conduct of the Defendant may be proved to shew with what view the letter was written, and sent, and delivered.

Q. State the transaction which took place?

A. When I was walking in *Grafton-street*, I met Mr. *George Lidwell*, whose person I recollected. He drew near me, and called out, "Scoundrel!" and when he came still nearer to me, he called me "A Coward."—He followed me for some time, and at the corner of *Suffolk-street* repeated the expressions. I took not the smallest notice of him. There were three or four gentlemen standing there. He addressed them in these words—"There he goes—Although a Colonel of a regiment in his Majesty's service, there is not a greater Coward or Scoundrel upon earth!" I walked to *Exchequer-street*, where I met Captain *Travers*, a gentleman whom I knew; I related the circumstances to him, and said, that as the matter was pending, he would hardly have accosted me so, had I not been single. I walked with Captain *Travers* into *Dame-street*. We there saw Mr. *George Lidwell*. Captain *Travers* heard and I heard Mr. *Lidwell* distinctly call me "A Scoundrel" again, and at the same time he looked at me with a sort of contemptuous grimace.

Q. Did you ever give any insult, or any provocation for this conduct on the part of Mr. *George Lidwell*?

A. I never spoke a word to him, nor did I alter a muscle of my countenance, so as to give him the slightest, or most remote trifling offence.

Cross-Examined.

Cross-Examined by Mr. McNALLY.

Q. You perfectly recollect the conversation with the sheriff at the first interview ?

A. I think I do, perfectly.

Q. He said, he did not call upon you to bring out the troops ?

A. When I said, he had no commands for me as High Sheriff, he said, he had no occasion for the troops.

Q. He did not make use of many negative observations, that he did *not* want you to protect the people, and in that strain, as stated by Mr. Attorney General ?

A. No, I do not recollect.

Q. You are a Colonel of an English Regiment—the *Romney Fencibles* ?

A. Yes.

Q. Mr. *John Lidwell* was a Cornet in that regiment ?

A. He was.

Q. He is an *Irishman* ?

A. He is.

Q. And he had the *great honor* of being admitted a Cornet in that regiment, as stated by the *Attorney General* ?

MR. ATTORNEY GENERAL.—My Lords, I beg pardon for interrupting the cross-examination : Some expressions supposed to be used by me in statement, are endeavoured to be applied to the witness, or pressed upon him for adoption.—I said, that Mr. *John Lidwell*, upon the application of friends, was admitted into the corps, which would have been an honor to any man who proved himself deserving of the situation.

Q. The officers of the regiment and Mr. *John Lidwell* could not agree ?

A. With regard to that, there are Irish gentlemen in the regiment whom he insulted grossly, one present—I made no distinction between countries,—I do not think it liberal.

Q. You had not seen Mr. *George Lidwell* before the transaction you mentioned ?

A. Not to my knowledge.

Q. And

Q. And Mr. Prior said he came to see if you would give satisfaction to Mr. *John Lidwell*?

A. He did: The message was from Mr. *George Lidwell*; as Mr. *John Lidwell* was bound to keep the peace, I suppose he did not choose to send a direct message, and therefore, I presume it was, the brother sent it.

Q. You were not bound over to keep the peace?

A. I was not.

Q. That was not considered necessary;—the message was from *George* to give satisfaction to *John*. You and Mr. *George Lidwell* never had any quarrel?

A. No.

Q. And the message, you say, was from Mr. *George Lidwell* to know whether you would give satisfaction to *John Lidwell*?

A. Yes.

Q. You had no conversation with *George Lidwell*?

A. Never.

Q. Then what passed respecting Mr. *John Lidwell* was with Mr. Prior, as from Mr. *George Lidwell*?

A. It was.

Q. Did you not think it an extraordinary thing, that a gentleman wanting to send a challenge, should send it, not by a *third* person, but by a *fourth* person?

A. I do not know as to that.—I never was made a principal until that transaction at *Tullamore*, and I thought it a matter in which the regiment was concerned.

Q. Was the officer, whom you say Mr. *John Lidwell* insulted, bound over to keep the peace?

A. He was not, for he never attempted to break it, as I hope and believe,

Q. Do you not believe, that Mr. *John Lidwell* knew the officers of the regiment would not give him a meeting?

A. I know nothing of his ideas; he was bound to keep the peace.

Q. According to the rules of honor, which guide gentlemen in cases of this kind, if a message were sent to a gentleman, and he bound the sender to keep the peace, would he not be rather treated with contempt than otherwise?

A. That is matter of opinion, and depends upon circumstances. The officers desired Capt. *Wales* to bind him over.

over. I can state to you the instructions of the General under whom I served. I acted under his orders, not under any impulse of my own. As I had acted from the beginning under the advice and orders of Sir *James Duff*, I apprized him of the message, and received a letter from him, which—

Q. I do not ask you the contents of that letter. Do you recollect, that Mr. *John Lidwell*, in the month of June, 1799, represented that he was in an ill state of health.

A. I do.

Q. He was in an ill state of health?

A. He was.

Q. He shewed a certificate of the state of his health?

A. I have it in my pocket.

Q. He found it necessary to have such a certificate?

A. Before he got it he was excused several duties.

Q. He made application for liberty to drink some mineral waters?

A. May I beg leave to read a letter from him? The leave was granted to him, and upon finding that he did not go, I wrote a note, expressing some surprize at his delay, as the surgeon said it was necessary.

Q. Did you not write a letter to Mr. *John Lidwell*, saying that such indulgence should not interfere with the duties of the regiment, without great necessity?

A. I wish to state the reasons:—Dr. *Archer* wrote to me, that exercise and air were as necessary to him as medicine, and that it was only requisite for him to repair to *Castle Connell*, or *Newcastle*, once or twice a day, which he was allowed to do.

Q. You did give him leave?

A. I did.

Q. But you, in your letter say, he may drink the waters at the Castle, which amounts to a refusal?

A. It is for the Court to judge, whether I refused him or not. I gave him leave to drink the waters, and he was excused such duty as interfered with that.

[Here the Court intimated, that this cross-examination was introducing that very evidence which had been objected to by defendants' counsel, when attempted to be given on the part of the prosecution.]

Q. Colonel *Dering*, the letters were delivered by a messenger whom you do not know.

A. Yes;

A. Yes; they were brought from the post-office, with the post-mark upon them. I found them upon my table.

Q. Have they been out of your possession since?

A. I enclosed them to Colonel *Littlebates*.

Q. They have gone a circuit since you had them?

A. I do not know where they went.

Q. Are they in the same condition as when you received them?

A. They are the same papers, not exactly in the same condition, for, I think, I might have torn off the outer cover of one. They are the same letters I received without any manner of doubt.

Q. Do you say that from any private mark you put upon them?

A. From a fortunate recollection I have of them.

Q. Suppose that copies had been kept by the persons who wrote them, and those copies had fallen into the hands of the Counsel for the prosecution, would you swear to the identity?

A. I recollect the manner of the writing in these letters, and scratches upon them, so that nothing you say can deter me from stating my positive opinion that they are the same papers I received.

Q. You had an option from General *Duff*, either to bring Mr. *John Lidwell* to a court-martial, or to apply to the Executive Power to dismiss him?

A. Just the contrary—because I left the option to Sir *James Duff*, and he refused to give Mr. *John Lidwell* a court-martial. I have papers in my pocket which will shew the whole transaction, if the Court would grant me permission to state them.

COURT. We think the cross-examination has now made them evidence, if the witness has no objection to state them.

Colonel *Dering*. My Lords, I am extremely happy that this opportunity is given me of stating the whole matter publicly, which I shall do from authentic documents, and the court and the Jury will see who has acted improperly.

I sent a draft of a memorial to Sir *James Duff*, which he returned, requesting me to forward it to his Excellency the Lord Lieutenant.—I shall state my propositions to Sir *James Duff*, and his observations upon them. Here is the letter from me to Sir *James Duff*.

E

“ *Limerick*,

" *Limerick, July 19th 1799.*

" SIR,

" I have the honor to enclose a memorial to his
" Excellency the LORD LIEUTENANT, signed by the Of-
" ficers of the Regiment under my command (* likewise
" charges which will be exhibited against Cornet Lidwell,
" if a Court-martial is determined upon); I have to beg you
" will be so good as to forward the same, together with the
" paper containing a copy of the letter sent to Cornet
" Lidwell by the Officers of the Regiment, and the cir-
" cumstances which will be produced in evidence, (if the
" LORD LIEUTENANT does not feel the Memorial suf-
" ficiently strong to dismiss Cornet Lidwell, without bring-
" ing him to trial) to support the 6th charge.

" I have the honor to be

" Sir,

" your obedient humble servant,

" CHOLMELEY DERING.

" *Colonel, new Romney (or Duke of York's
own) Fencible Light Dragoons.*"

The following lines were written upon the back of this letter by General Duff.

" * Likewise circumstances that have induced us to trouble his Excellency on this occasion."

" To be wrote over again,

J. D."

" *Charges to be exhibited against Cornet Lidwell.*

" 1st. For absenting himself from Parade on the 23d
" of June, and upon being asked by the Commanding of-
" ficer his reason for so doing, informing him that Mr.
" Archer, the Staff Surgeon had ordered him not to attend
" Parades, which assertion is flatly contradicted by Mr.
" Archer, as his letter to the Commanding Officer proves.

" 2d. For informing Mr. Archer, that Colonel Dering
" had said to him, after giving him a severe horse-drill, that
" that would do him more good than Mr. Archer's pre-
" scription, which is a direct and malicious falsehood.

" 3d. For coming improperly dressed to the foot-parade,
" on the 5th of July, in disobedience to existing orders,
" and for disobeying the order of the Commanding Of-
" ficer,

" ficer, to appoint himself properly, and return, by continuing the same dress, and going out on horseback.

" There appears to me
" nothing in this to constitute
" a charge."

" 4th By endeavouring to injure the service,
" and the harmony and discipline of the Regiment,
" in particular, by inviting Cornet *Penderleath*,
" (who joined the Regiment on the 15th day of
" July) to dine with him at his Barrack, on the
" 17th, knowing it to be one of the days when
" by invariable custom, every member of the Regiment
" dines together at the mess, and for recommending
" Cornet *Penderleath*, not to get too
" many appointments until he saw how things turned
" out, observing, that he Cornet *Lidwell* was
" upon indifferent terms with the Colonel.

" I am of the same
" opinion as of charge
" the fourth."

" 5th For ungentleman-like and quarrelsome
" conduct at the mess on the 17th of July, and
" calling Lieutenant *Adolphus* out of the room to
" demand an explanation of his conduct, and upon
" the interference of the Commanding Officer,
" telling him that a Commanding Officer had no
" right to interfere in such matters, and adding that
" he considered every thing that was said at the
" mess in the most contemptuous light.

" 6th. For behaving in a scandalous, infamous manner,
" unbecoming an Officer, and a Gentleman, on the 18th of
" July, by insulting the Officers of the Regiment, and endeavouring
" to provoke them to fight him.

" Charges
" not to be
" sent. J. D."

" CHOLMELEY DERING,
" Colonel, new Romney (or Duke of York's
" own) Fencible Light Dragoons.
" Limerick,
" July 19th 1799.

Copy of the Letter sent on the 18th of July to Cornet *Lidwell*
by the officers of the Regiment.

" The officers of the *New Romney* Fencible Light Dragoons,
" having taken into consideration the general conduct of
" Cornet *Lidwell* at their mess and particularly last night,
" have unanimously come to the determination of desiring
" he will not consider himself any longer a member of their
" society."

“Circumstances” “which have induced us to come to the
“above Resolution:

“Upon Cornet *Lidwell* seeing Captain *Bray* and Cornet
“*Nevill* walking in the street, he went into a neighbouring
“house, and procured a stick; when he came up to Cap-
“tain *Bray*, and addressed him in a threatening tone, and
“asked, if he had been concerned in sending the letter he
“had received this morning; and, upon Captain *Bray*’s
“answering him in the affirmative, desired Cornet *Nevill*
“to retire, as he had a respect for him, but wanted to
“to speak to Captain *Bray*, as he was determined to seek
“satisfaction from some officer in the regiment, and one
“should fight him. Cornet *Nevill* refused to retire, saying,
“that the letter was the joint act of all the officers. Cornet
“*Lidwell* then went into the coffee-room, where several of
“the officers were present, where he publicly said he was
“determined to fight one of the officers, he said he did not
“care who, he had some respect for Cornet *Nevill*, but it
“made no difference; he said he was excluded the mess to
“screen Colonel *Dering*, Major *Taylor*, Captain *Bray*,
“and Lieutenant *Adolphus* from fighting him, that he
“wanted to send for Colonel *Dering* and Major *Taylor* to
“see all the officers together; that he would come to the
“mess, and see who would turn him out; that he would
“have satisfaction for sending that impertinent note by a
“waiter and not by a Gentleman. Upon the officers leav-
“ing the coffee-room, excepting Captain *Wales*, who was
“engaged in reading a paper, Cornet *Lidwell* addressed
“him, as he had done Captain *Bray*, when upon receiv-
“ing the like answer, he held a stick over his head, called
“him a scoundrel, and added, that if he did not think he
“would take the advantage of a superior officer he would
“beat a pistol into his hand, if possible.

“The officers having bound themselves to each other not
“to notice any personality, Captain *Wales* made no reply.
“—Cornet *Lidwell* walked up and down the street for a
“considerable time in a menacing manner: upon meeting
“Lieutenants *Adolphus* and *Towers* and Cornet *Plender-*
“*leath* walking together, he with an insulting air broke
“through them; and upon Major *Taylor*’s having passed
“him he was seen to shake his stick at him.

“These

" These circumstances being reported me, I ordered
" Cornet *Lidwell* into close arrest.

Chelmeley Dering, Colonel.

" July 19th, 1799.

(Endorsed by Sir *James Duff*—" To be wrote
" over again, *J. D.*")

Colonel DERING.—I am to observe, that in this letter,
Sir JAMES DUFF struck out the words " to support the
" sixth charge" and substituted the words after, " Circum-
" stances"—" which have induced us to come to the above
" resolution."

Doneraile, July 19th, 1799.

" My Dear Sir,

" I have read over the papers respecting the conduct of
" Cornet *Lidwell*.

" In the present stage of the business, it is not necessary
" to bring forward the charges. You have memorialled the
" LORD LIEUTENANT on the subject, and in your letter
" on the 18th instant, given a *statement* of the reasons that
" had induced the officers to form that resolution. If the
" LORD LIEUTENANT (instead of dismissing him the ser-
" vice) prefers bringing him before a general Court-mar-
" tial; when that shall be notified to you, it will be time
" enough to determine on what *charges* you mean to bring
" against him.

" I have taken the liberty of giving my opinion as to
" two of the *charges* No. 4 and 5; and I have no doubt
" on your considering them again, you will agree with
" me.

" If you can add any thing to the *circumstances* in the let-
" ter of the 18th, that have induced the officers to memo-
" rial his *Excellency* against Cornet *Lidwell*, it may greatly
" assist your object, as I imagine from that statement he
" will take his determination.

" I enclose you the *papers*, with my letter to Colonel
" *Littlehales*, which you will forward by the post.

" Believe me to be,

Yours sincerely, &c.

" *James Duff*."

" Colonel DERING."

Colonel

Colonel DERING.—The other letter which I received from Sir JAMES DUFF was in consequence of my reporting to him the further progress of this business.

(*Extract.*)

Limerick, September 27th, 1799.

My Dear Colonel,

“ I am sorry to find you have been so much plagued with your quondam Cornet *Lidwell*. I strongly recommend your avoiding, by every possible means, having any serious dispute with any of *those Gentlemen*. Your answer to all of them ought to be, that independent of your having bound *yourself*, with the *officers* of the Regiment, not to give any personal satisfaction to Mr. *Lidwell*, you was also determined *not* to satisfy any other *Gentleman* on that subject. If they have committed themselves in that respect, I hope and trust that Government will interfere, and take up the business.

“ Yours sincerely, &c.

“ *James Duff.*”

Colonel *Dering*,
New Romney Light Dragoons.

Colonel DERING.—I feel particular satisfaction at having an opportunity of stating this matter to the Court, although I do not think my conduct requires justification. If Mr. *George Lidwell* had come to me in a liberal manner, I would have stated all these things to him, and have shewn him what was the conduct of his brother. I shall now, my Lords, beg leave to read the Memorial to the LORD LIEUTENANT, which was signed by every officer present. I drew the several papers and read them to all the officers upon every occasion.

“ To his Excellency the LORD LIEUTENANT of *Ireland*,
“ &c. &c. &c.

“ The memorial of the Officers of the New Romney (or
“ Duke of York's own) Fencible Light Dragoons.

“ *Humbly sheweth,*

“ That Cornet *Lidwell* of the said Regiment, from a very
“ short time after his joining, has uniformly conducted him-
“ self

" self in a manner, so wholly unbecoming the character of
" an Officer and a Gentleman, and has thereby rendered
" himself so obnoxious to every Officer present with the
" Regiment, that your memorialists, not only considering
" his continuance incompatible with the harmony of the
" Corps, but in every shape disgraceful to it, earnestly pray
" your Excellency will please to dismiss him the same.

" which is submitted."

Signed by every Officer
with the Regiment.

July 19th 1799:

(Copy.)

The next letter read was from Surgeon *Archer*, as follows:

" SIR,

" In answer to your note of this date, (which I have
" just had the honor to receive) I beg leave to state,
" that Mr. *Lidwell* applied to me yesterday, for advice
" respecting some symptoms of nervous irritability, under
" which he labours—the consequence as I imagine of a
" protracted and debilitating course of mercurial medicines,
" for which I recommended, as the best tonic plan he can
" adopt at this season of the year, country air, moderate
" exercise, and the use of one or other of the chalybeate waters
" in the vicinity of this town; not a word passed between us
" respecting the necessity of absenting himself from duty:
" but on this head I shall beg leave to observe, that I think
" with a little assistance from his brother subalterns, he
" may do every absolutely necessary duty the present state
" of affairs seems to demand, and attend to the re-establish-
" ment of his health at the same time, for confinement is
" no longer required, on the contrary, active employment,
" and exercise appear to be as much wanting as medicine,
" in such a case as his. He should however be regular in
" repairing to the well every day before breakfast and be-
" tween breakfast and dinner.

" I have the honor to be

" Sir,

" your most obedient servant,

" CLEMENT ARCHER.

" State and Staff Surgeon:

" *Limerick*,

" 23d June 1799.

" COL DERING, &c. &c. &c.

Colonel

Colonel *Dering* then read the following letters and certificate :

Limerick, June 26, 1799.

" SIR,

" I request you will comply with the inclosed certificate,
" as it is for the good of my health.

" I have the honour to be,

" Sir,

" Your most obedient humble servant,

" JOHN LIDWELL,

" Cornet, new Romney Lt. Dragoons."

Col. Deering.

" I CERTIFY that it is necessary for Cornet Lidwell, of
" the Romney Fencible Cavalry, to drink the waters of
" Castle-Connel, or Newcastle, for at least a month.

" CLEM. ARCHER,

" Staff Surgeon."

Limerick, 26th June, 1799.

" I afterwards wrote this note to Cornet *Lidwell* :

Limerick, June 27, 1799.

" Colonel D. expected that Cornet Lidwell would apply
" for one of the officers to take his duty for him during the
" time requisite for him to repair to New-Castle. But that
" not having been done, Colonel Dering informs Cornet
" Lidwell, that he has no objection to Cornet Lidwell's
" either doing this, or taking off his sash during his ab-
" sence from the town, for the purpose above-mentioned."

After this, I believe, Cornet *Lidwell* made a report to
the Staff Surgeon, not consistent with his situation, and I
received this letter from Mr. Archer :

" SIR,

" I am extremely sorry to address you, once more, on
" the subject of Cornet Lidwell, of your regiment. Hap-
" pening this morning to meet him accidentally on the road,
" he (without expressing a wish that I should take notice of it
" to you) informed me, that contrary to my request, not order,
" he had been at hard exercise for several hours this morning.
" As I am of opinion, that too active exertions may be pro-
" ductive of disagreeable, if not dangerous consequences in
" his present state of convalescence, I think it a duty I owe
" to my patient, and to the service in general, to request
" that

" that he may (till I say he is able to bear it) be exempted
 " from the more laborious part of the duty of a subaltern
 " officer, but lately entered into a regiment of cavalry.
 " Were you to take the trouble, Sir, to enquire into my
 " character, you would be informed that I am as incapable
 " of entering into collusion with an officer, to enable him
 " to shirk any part of his duty, unless there is an absolute
 " necessity for it, as I am too well acquainted with the
 " nature of the service to wish to interfere with the com-
 " manding officer, in the interior regulations or discipline
 " of his corps; but you would also learn, that I know
 " enough of the responsibility of the station I have the
 " honor to hold, not to complain to those from whom I
 " shall obtain impartial redress, when I see my certificate
 " disregarded, if not disrespected. I therefore take the
 " liberty of informing you, in the most unequivocal terms,
 " that if any ill consequences should arise to Cornet *Lid-*
 " *well*, from your not permitting him to follow my advice
 " to the extent I think necessary, I shall be reduced to the
 " unpleasant necessity of memorialing the Lord Lieutenant
 " on the subject.

" I have, Sir, the honor to be,

" Your most obedient Servant,

" CLEM. ARCHER."

" *Staff Surgeon of the Brigade, now serving*
 " *in the Southwestern District.*"

Colonel *Dering*—after this, Mr. *Thwaites* who was under Mr. *Archer*—(here the Counsel for Defendants objected to any declaration made by Mr. *Thwaites* being given in evidence.)

The Witness was then interrogated by the Counsel for the Crown.

Q. Did you refuse any indulgence to Mr. *Lidwell*, or put him under any severe exercise?

A. I complied with his request as far as I possibly could; at the same time, not forgetting my own situation, and I put him under such exercise as was compatible with the directions of Surgeon *Archer's* first letter,

Cross examined again.

Q. Did you put him to such exercise as required hard riding in the morning?

F

A. Active

A. Active exercise being recommended, I did direct such exercise as was not incompatible with his going to the wells, and I even told him he might take off his sash for the purpose.

(Here it was insinuated, that Colonel Dering had not read the entire of General *Duff's* letter on the 27th of *September*, upon which the Colonel read the entire, but no part appeared applicable to this subject, save what he had first read.)

Q. Those letters are all in your hand-writing?

A. Not all—Those which were sent to General *Duff* are my hand-writing, except his objections, which I have stated.

Q. They are signed by you?

A. They are, being official papers; I have no clerk and being in the habit of writing my letters to General Officers.

Q. The second charge against Cornet *Lidwell* is for informing Surgeon *Archer*, that you had given him a severe horse-drill?

A. Mr. *Lidwell* informed Mr. *Archer* of that—I questioned Mr. *Archer* upon it in the presence of Mr. *Thwaites*, who is now in court, and Mr. *Archer* denied it expressly.

Q. Is the animadversion upon the charge, "a direct and malicious falsehood—" your hand-writing.

A. That is not an animadversion—It is the charge itself—nothing could be more malicious than the assertion—it tends to put me in an odious light.

Q. Was not General *Duff* of opinion, that this was not such a charge as should be preferred.

A. No such thing:—the fourth and fifth charges were those he objected to:—it is the second charge that you are observing upon.

Q. Then the General thought Cornet *Lidwell* should be brought to a court-martial upon this charge.

A. The General desired, that there should be no court-martial.

Q. Was he brought to a court-martial?

A. He was not,—he was dismissed.

Q. Did you send the memorial before you sent the charges?

A. No, I sent both together, under the same cover, to General *Duff*. He transmitted the memorial, and desired the charges to be withheld.

Here

Here a letter, stated to be written by Surgeon *Archer*, to Cornet *Lidwell*, was offered in evidence.

Mr. ATTORNEY GENERAL objected, saying, that Mr. *Archer* should be examined to prove the hand-writing, and explain the cause of the letter, and when it was written: it might have been written yesterday.

The Counsel for the Defendants contended, that this letter ought to be read, upon the same principle that Sir *James Duff's* letters and Mr. *Archer's* letters were read by the witness.

LORD KILWARDEN, Ch. J. No objection was made to the Witness reading the letters which he produced as explanatory of the transactions he was interrogated to upon the cross-examination. But now you offer a letter, written by Mr. *Archer*, to Mr. *Lidwell*:---That evidence is objected to as inadmissible. If it be a letter written at the same time, and relative to the same transactions, it might be fair and candid to have it read:---But I beg to be understood as giving no opinion upon the admissibility of this evidence. An extraordinary course has been adopted in this trial, for great part of the evidence has nothing to say to the case before the Jury.

Pray, Colonel DERING, do you know any thing of this letter?

A. Not in the least, my Lord.

LORD KILWARDEN. What is the date of it, Mr. *M'Nally*?

Mr. M'NALLY. My Lord, it is dated on Wednesday, but there is no day of the month.

Q. Whose hand-writing is this letter?

A. I believe it is Mr. *Archer's*.

Q. Do you not believe it relates to the same transactions of which you have been giving evidence?

A. I can form no belief about it, but from your assertion.

Q. Be kind enough to read it?

F 2

A. I beg

A. I beg to be excused,---I think I have read enough.

Q. You gave directions, that this Gentleman should take such exercise as Officers usually take?

A. Considering it did not hinder him from drinking the waters, he was ordered such exercise as young officers are accustomed to upon joining the regiment.

Q. You had a written consultation with Mr. *Archer*?

A. No; I had no letters from Mr. *Archer* but those which I have read here.

Q. Did you not write these words—"Close confinement cannot hurt him?"

A. When he broke through the gentlemen in the manner I before stated, then I thought it necessary to arrest him, and he was put into close arrest; and I thought it right, as he was under the care of a surgeon, to make a memorandum to enquire whether close confinement would hurt him—it was for that purpose merely.

Q. By your letter of the 23d of *July*, it appears he was in close confinement?

A. He was in close confinement, and the memorial being to go before the King, it occasioned a delay. Mr. *Lidwell* applied to have his arrest enlarged, which was done, and he was permitted to go to the waters.

Q. This gentleman was dismissed from the regiment without a trial?

A. He was.

Q. Some of the charges were such, as, in the opinion of General *Duff*, a gentleman ought not to be put upon his trial for?

A. He disapproved of two of them.

Q. Was not your motive for not bringing him to trial, and was not the motive of those who signed the memorial, this, because if he had been tried, he had a chance of an acquittal?

A. If that had been my motive, would I have sent six charges to the General?

Q. Was not your motive in signing the memorial this, that you might get rid of him in one case, which you might not in another?

A. Decidedly not;---for I would not have sent the charges, nor thought of bringing him to trial, if I had not been convinced I had decided proof to convict him.

A. If

Q. If you could have substantiated these charges by evidence, why insert two charges which were rejected?

A. It was natural for Sir *James Duff*, being in a higher situation, to select particular charges out of many;---he was lenient,---but he afterwards yielded to me in conversation. However as he was of a contrary opinion at first, I would not have brought them forward.

Q. Did Mr. *Lidwell* receive notes of the proceedings which were carrying on under your directions?

A. They were carried on under the directions of Sir *James Duff*, who commanded me.

Q. Was he furnished with a copy of that memorial which was transmitted to the King?

A. When I reported the matter to Sir *James Duff* I had done my duty---my hands were washed out of it---I can form no opinion upon it.

Q. Can you form an opinion whether he was served with a copy?

A. Am I to answer this question---I have no objection to answer till night, as to matter within my knowledge.

Q. Can you form a belief?

A. I rather think he had not a copy because he and his friends thought it would come to a Court-martial.

Q. Has he not been dismissed without an opportunity of contradicting the memorial?

A. Most undoubtedly.---He was superseded by order of the King; because it is usual in the service, where officers are unanimous in memorialing, that a member of the corps should be dismissed---it is, I say, the invariable course to do so without trial.

Q. Then according to the rules of *your* Regiment---

A. My regiment,!--No, Sir, it is the course of the service---it is generally considered, that if a regiment be unanimous, they must be right.

Q. Was this memorial prepared by you?

A. It was prepared by me, and read before every officer---I desired them to give to me their unbiassed opinion---that it concerned them all---they were all interested---I was not a principal in any shape, but being at the head of the regiment---the officers had not spoken to him for some time, and called upon me several times about him.

Q. Several officers have left your regiment lately?

A. No, Sir, not lately---nothing more than the common course of things.

(Here the case was rested on the part of the Prosecution.)

Mr. PONSONBY.---*May it please your Lordships, and you, Gentlemen of the Jury*---In this case, I am counsel for the Defendants, and their situation is somewhat singular; because, Gentlemen, from the nature of the charge which has been preferred against them, it is impossible for them to advance any evidence, in exculpation of that conduct which is stated by the single oath and testimony of the Prosecutor himself.

Gentlemen, there are some actions which pass among mankind, so circumstanced in their own nature, as to give every possible advantage to the person, who makes those actions the subject of attack and charge; because, where no persons are present, and no persons constant of the facts and conversation alleged, but the person making them the subject of charge, and the individual accused, every advantage rests with him who makes the charge, and every disadvantage lies upon him who is to rebut it.

If, Gentlemen, The Defendants could, by law, be called upon the table, to confront Col. *Dering*, the Court and you might possibly hear a story very different from what has been told.---But as the law makes it impossible that the Defendants can be confronted with the sole witness in this case, and as it is impossible for them to produce witnesses to contradict what the Prosecutor has been pleased to swear, you will see, from the circumstances of the case and the law of the land, that the Defendants are accused upon the testimony of a single witness, without the possibility of offering any thing in their defence, except what has been extracted by the cross-examination.

Gentlemen, I do really think, that I never saw a witness come upon the table, with a more perfect determination in his own mind, to support the charge made against the Defendants. I never saw a witness who desired more to confine his testimony to matter within his own knowledge, which he had canvassed and studied against the Defendants; and less inclined to enlarge his evidence, by looking at documents, which not having read or studied, for aught he knew, contained matter favourable for the Defendants.

But, Gentlemen, notwithstanding, I think the witness has stated sufficient matter to induce you to acquit my clients of the charge which has been preferred against them. You will observe, that though by the rules of the King's service,
Colonel

Colonel *Dering* was placed in such a situation, as to get the brother of one of the Defendants dismissed without trial, they cannot be convicted without some enquiry into their alleged guilt; and you will please also to observe, that neither the conduct, nor the character of Mr. *John Lidwell*, who has been dismissed without trial, is now the subject of enquiry. Whether Mr. *John Lidwell* were guilty, or not, of the charges contained in the memorial, is a matter upon which you, Gentlemen, and consequently I, can form no opinion, except what we have heard from Colonel *Dering*, in the course of this examination, and is not a matter submitted to you, upon which you are to pronounce a verdict. But, Gentlemen, you are desired to declare by your verdict, whether the two defendants are guilty of the offence charged upon them by the information, which amounts to this,---the sending and delivering a challenge, and endeavouring to provoke Col. *Dering* to fight.

It appears from the evidence of Colonel *Dering* himself, that whatever description of provocation it might be in the contemplation of any man to offer him, he was safe from all danger likely to arise, because he was previously fortified by a resolution, not to listen to any provocation either by the dismissed officer, or any of his friends.---What degree of provocation may be contained in a charge exhibited against a Gentleman making a complaint of a superior officer, which complaint is declared to be false and malicious, without any opportunity given of proving or disproving the assertion, I do not pretend to know;---nor do I pretend to say, what degree of provocation you would think to be given by a man, saying that a charge made against himself was false and malicious, without any opportunity allowed of enquiring into the truth or falsehood of it.

But, Gentlemen, this does not touch the conduct of the defendants, because, at present, we have nothing to do without Mr. *John Lidwell*. You are to enquire into the conduct of the Defendants. The only witness on behalf of the Crown has been pleased to say, that it was known to Mr. *John Lidwell*, and all his friends, that the officers had resolved, not to listen to any provocation from him or his friends.---If that were generally known, does it not appear rather extraordinary, that Colonel *Dering* should assert, that the object of the brother of the Cornet and his friend was,

was, to induce the Colonel to give satisfaction in an honourable way, knowing that it was pre-determined not to listen to any provocation,---that they should take steps to effect what they knew it was impossible to accomplish?

Colonel *Dering* has said, that if Mr. *George Lidwell* had applied to him in a gentleman-like manner, he would have furnished him with all the facts which had occurred respecting his brother's conduct. Now, Gentlemen, is it not a little difficult to understand how he should state, that it was generally understood, that he would not give the satisfaction, which was required, but yet he would give such an investigation as he gave here this day? Is it not more reasonable to suppose, that Colonel *Dering*, upon receiving these letters, did not regard them in the light of letters written for the purpose of provoking him to fight?---because, he states, that *Lidwell's* friends knew he would not fight. Is it not more reasonable to suppose, that he considered them in the nature of a request made to him with respect to the brother, but that request not being made in a gentleman-like way, the Colonel would not comply with? You, Gentlemen, recollect his expressions, that he would comply, if he had been applied to in a proper way. The witness has produced the letters, shewing the application.---How can you suppose they were intended to produce that action which the writers knew would not follow? and is it not, therefore, more reasonable to suppose, as I said before, that the Colonel did receive these letters, rather as demanding an explanation relative to the brother, who had been dismissed without any enquiry whatever? If Colonel *Dering* thought these letters were intended to produce a challenge, why should he say, that he would have given information, if applied to in a proper manner?---Because, if the letters were intended to produce a duel, he must have thought, that going into a justification of his conduct respecting the brother, would not answer the object of him who wrote and sent the letter; and therefore, when he stated, that he would have furnished those materials which he would have stated, to the defendant, it is manifest he did not consider the letters as a provocation to fight.

Gentlemen, with regard to these letters themselves, I understand, that before I came into Court, it was determined, that they should go to you upon no other proof than similarity of hand-writing, and that no persons were produced

produced to prove the hand-writing, who had seen the defendants write, or were well acquainted with their hand-writing;---that the only evidence was, that the witnesses had seen different instruments, purporting to be written by the person whose name they bear.

COURT.---Mr. PONSONBY, you have not been accurately informed of the evidence which has been given.---A witness did swear that he had seen Mr. *Lidwell* write once or twice, had corresponded with him and received bills of exchange from him, and from all together formed a belief of his hand-writing.

Mr. PONSONBY. My Lords, I thank you for setting me right, I was unluckily absent at that period of the evidence; but still, my Lords, I submit to the Jury that the evidence is unsatisfactory; it appears, Gentlemen, that Mr. *George Lidwell* has constantly resided within this kingdom and yet they have not ventured to produce any person familiarly acquainted with his hand-writing, could they not find some person who had frequently seen him write and not confine the evidence to the testimony of a person who only saw the Defendant write *once or twice*; such evidence as this cannot be sufficient to warrant any conscientious Jury to find a verdict affecting the character, liberty or property of a fellow-subject; but Gentlemen, if there be no evidence sufficient for you to find that the letters were written by the person whose name they bear, still less is the evidence that they were delivered for the purpose which has been stated. It is said the principal letter was written by the Brother of the unfortunate Officer dismissed from the King's service as unfit to remain in it, and upon the statement made by the witness, as a person unfit to remain in society itself; because the memorial states, that the Officers *could* not live with him. Gentlemen, I could not conceive that any man making a charge of that nature against another would not afford him an opportunity of defending himself, although the rules of the service may be such, that an immediate dismissal is preferred to a court-martial, it is natural that in the mind of the Brother of the dismissed Officer some indignation might arise, and if he did write a letter, some coarse expressions might creep into it; but Gentlemen, it is impossible that such a letter could be for the purpose of a duel, because the witness says, that the parties concern-

ed knew he would not fight a duel, but that he was ready to furnish the documents to justify his conduct; how could he suppose it a provocation to fight a duel, when he treats it only as an ungentleman-like request to him, in order to account for his conduct towards the defendant's brother; the witness says, that if the application were made to him in a gentleman-like manner—what other application does he state? None other than which he has proved; does Colonel *Dering* mean to say, that if instead of using coarse expressions in the letter, he had said “Sir, I think you have behaved to my relation as one gentleman ought not to another, his situation disqualifies him from seeking satisfaction, I request you will give it to me.” That I think would be a quiet way of asking a challenge, and yet would Colonel *Dering* receive it as a challenge, and not rather as a request to produce those letters which he has this day read in evidence? Does it not appear, that he thought it was for the mere purpose of obtaining satisfaction with regard to the conduct of his brother not being enquired into? Does the Colonel mean to say, that he conceived a challenge to be of this nature, that if it be made in coarse language it is not to be attended to; but if it be in gentleman-like language, it is to be complied with, so far as not to meet the person in the field, but to produce all the supposed documents to justify the conduct towards the person alleged to be injured? Gentlemen, I lay no great stress upon the circumstance, that Mr. *Lidwell* and his friends were acquainted with the determination of the Officers not to fight, but I rely upon Colonel *Dering's* confession, that if an application had been made to him in a gentleman-like way he would have satisfied him—how? fight the person making the request? no, but that he would produce the justification of his conduct;—what then is the substance of the charge? not the delivering of a letter to fight, but an ungentleman-like request to justify his conduct.

Gentlemen, there is no evidence against the Defendants but what you have heard from the testimony of a single witness—he cannot come before you with an unbiassed mind, every man in his situation must wish to do two things—to justify his own conduct and to censure the conduct of those whom he accuses. It cannot be a matter of indifference to Colonel *Dering*, whether he shall be considered as having acted severely towards Mr. *John Lidwell*, or whether he acted as a gentleman—under the same feelings

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as other Gentlemen, he must wish to support his own character and to fix the charge upon those whom he has accused. Therefore, Gentlemen, without wishing to impute more to Colonel *Dering* than I would to any other man in the same situation, I beg leave to say, it is impossible he can be an unprejudiced witness upon this occasion.

Therefore, Gentlemen, I submit it to you, that the only matter which could affix the charge upon the Defendants, namely, the letter containing the supposed challenge is not proved by such evidence as should satisfy a Jury in pronouncing a verdict which is to be followed by a judgment affecting their character, liberty and property. Colonel *Dering* has not stated any circumstance to shew, that any person was present who could give testimony besides himself, so that the Defendants cannot give evidence in vindication of themselves.

Gentlemen, as to what passed in *Dublin*, it was given in evidence under pretence of explaining the meaning of the letter. At this very time, you observe, Gentlemen, Colonel *Dering* had preferred the charge for provoking him to fight, and the information was filed by the Attorney General, and therefore it is more natural to refer that conduct of Mr. *George Lidwell* to the circumstance of having the information filed against him than any original intention supposed to have entered his mind at the time the letter was alleged to be written.—But how does this affect the Defendant?—It is said the letters were delivered and that they were of such an import—but no evidence is given of their having been written by the Defendant, but a comparison of hand-writing and a belief formed more from that comparison than any knowledge of the hand-writing—Colonel *Dering* found them upon the table with the post-mark upon them, there is no evidence of the delivery of them; then this transaction in *Dublin* is brought to bear as to the intention of the writing of the letter, which letter is not brought home to the Defendant. Gentlemen, it is a maxim in our law, and should be so in every law, that *doubt* is equal to acquittal; the evidence in this case is not such as to remove all doubt from your minds, and therefore, I trust you will acquit the Defendants.

Mr. PRIME SERJEANT. *My Lords, and Gentlemen of the Jury.* I am in this case of counsel with the Attorney General. The learned Counsel for the Defendants in what

he has been pleased to call the statement of his client's case, says there is no evidence to support the charge but the testimony of Colonel *Dering* alone; if it stood merely upon that ground, I should have no difficulty in letting the case go to you, Gentlemen, upon that evidence alone. From the manner in which the learned Counsel has treated that evidence, and from his dwelling so long upon the circumstance of its being confined to the single testimony of Colonel *Dering*, I thought it had been the testimony of some approver, an accomplice in the guilt, not a Colonel in his Majesty's service, a man of honour standing upon his situation and character, and I did expect from this train of animadversion that his evidence would not have remained uncontroverted. But, Gentlemen, the learned Counsel seemed to feel that there were other pieces of evidence exclusive of, and in addition to, the testimony of Colonel *Dering*, and then he said that the letters were no evidence at all; this assertion is followed by another, that Colonel *Dering* came forward with a determination to convict. If the learned Counsel means, that the Colonel came with a determination to speak the *whole truth*, he said right:—But if he meant to say, that the Colonel did not intend to tell the entire truth, but that he wished to convict the Defendants from some improper motives, the matter has been misrepresented. You, Gentlemen, have heard the whole testimony of Colonel *Dering*, and every thing bearing upon the case has been laid before you, from all of which taken together you are to form your opinion.

Then, Gentlemen, the learned Counsel says, there was no intention to provoke a duel, because the Defendants having known the intention of the Officers not to fight, it could not be the object of the letter to convey a challenge. Gentlemen, it appears to me, that the direct contrary conclusion follows, because the determination not to fight being formed, it was an aggravated attempt, not only to provoke the Colonel to fight but to induce him to break a resolution, which if he had done, he would have been dismissed from the King's service, he would have forfeited the opinion of the superior Officer, under whose orders he acted, and the good opinion of his brother Officers, who had reposed a confidence in him; and therefore it was a prodigious aggravation, and from thence it must clearly follow, that supposing duelling could be admitted for a moment in
a court

a court of justice, Mr. *George Lidwell* had no call of honour upon Colonel *Dering*, who had not done any thing to raise the feelings of that Gentleman, therefore his attempt was to work upon the feelings of Colonel *Dering*, so as to induce him to violate a solemn resolution and to forfeit his situation in the army.

Gentlemen, if I were to put this case upon the ground of legality, I might say that the case which has been made was no justification for sending a challenge to any man: but I do not,—I address you, as men of honour and of feeling, then see what was the situation of Colonel *Dering*:—His whole conduct respecting Mr. *John Lidwell* has been stated to you, if the Colonel was wrong in that respect, he was wrong with the concurrence of Sir *James Duff*, his own Officer, and he was wrong with the concurrence of the LORD LIEUTENANT and his MAJESTY. Colonel *Dering* had no intercourse with the family of the *Lidwells*, except Mr. *John Lidwell*, who to the misfortune of the Regiment had obtained a commission in it, that was his only introduction, and in what light do the Defendants appear? Without knowing or being acquainted with Colonel *Dering*, Mr. *Prior* came to him, and under the character of *High Sheriff* gains admittance; he desires to know if Colonel *Dering* would give the satisfaction of a Gentleman to Mr. *Lidwell*. Gentlemen, you all know that there is no precise form of words for a challenge, and you are to judge, whether the words used answered to a challenge. The answer of Colonel *Dering* was such as a man of honour would give under such circumstances. Mr. *Prior* then desired to deliver a letter from Mr. *George Lidwell* which the Colonel likewise refused. He then saw Mr. *George Lidwell* and Mr. *Prior* walking upon the parade making grimaces and acting in an improper manner. In the course of the very same day, two letters are left upon the Colonel's table, one in the hand-writing of Mr. *Prior*, proved incontestibly, and the other in the hand-writing of Mr. *George Lidwell*, proved in the manner you have heard. Now Gentlemen, you are told that those letters which have been produced are a fabrication; but there is evidence sufficient to go to a Jury to satisfy you of the fact of the hand-writing and that evidence remains uncontradicted; see also how the parties are connected:—the letter from Mr. *Lidwell* states, that “Mr. *Prior* who
“ undertakes

“ undertakes the delivery of the letter, will receive any “ commands which the Colonel may have in consequence,” and that letter so delivered is a letter of direct insult and hostility, if it be not a provocation to fight I really do not know what such a provocation is. If this subject depended upon the testimony of Colonel *Dering* alone, I should be satisfied: But Gentlemen, it depends also upon the letters themselves, which have been proved in legal form, and it is remarkable, that not a single witness has been produced to shew that he does not believe these letters to be the handwriting of the persons whose names they respectively bear, not a single witness from the numerous friends with whom the Defendants are acquainted; neither, Gentlemen, has there been a single witness produced to contradict any one of the facts sworn to by Colonel *Dering*. If the Defendants were not in *Tullamore* at the time stated, they might have proved where they were; or if in truth they were in that town, but were otherwise employed than has been stated in the evidence, they had an opportunity of proving what the fact was.

Gentlemen, upon the whole of the case, I do not think it necessary to take up much of your time, I do not address you upon the ground of the illegality of the proceeding upon the part of the Defendants: but I put the case upon this ground, that as Colonel *Dering*, an Officer in high command, acted under the opinion of the Officers of his regiment and of the commanding Officer of his district, the approbation of the LORD LIEUTENANT and of his MAJESTY, is he, Colonel *Dering*, or is he not, to be protected by a Jury like you? If I could believe, that such a Jury as I now address could have any doubt upon their verdict, I would recommend it to Colonel *Dering* and every Officer, who is obliged to obey orders and to preserve discipline, to lay down his commission. Colonel *Dering* is placed in the situation in which he stands to fight the enemies of the country, not to meet every private individual who may choose to make *revenge* a point of honour, and therefore, I trust you will find a verdict of conviction.

LORD KILWARDEN, *Chief Justice.* Gentlemen of the Jury. We are now engaged in a very important duty, we are to dispose of a case upon which, I think, much time has been mispent, and much evidence has been given that cannot

cannot bear upon the question which you are to try. Gentlemen, you have to try a simple matter of fact, namely, "whether both or either of the Defendants be guilty, of the "crime with which they stand charged?" and if they or either of them be guilty, you, Gentlemen, are as sensible as I am that the transaction is not to be justified. The law knows of no such palliatives as have been mentioned, to admit such would be to leave every man to be the arbiter of his own cause.

You are first to consider what the crime is which is charged against the Defendants; and you are next to enquire, whether the evidence be sufficient to satisfy your minds, that the persons accused are guilty of that crime, if you are not satisfied, clear of all reasonable doubt, you ought to acquit the Defendants.

This, Gentlemen, is an information which has been filed officially by the Attorney General at the command of the Government; the violation of the law charged is of a nature so dangerous to the administration of justice and preservation of the public peace, that it was not thought fit to be left to the ordinary course of proceeding by indictment, but is taken up in this manner by the government; still, however, Gentlemen, you are to attend to the evidence with the same equal deliberation as you would in an ordinary case, not leaning to the one side or the other because the Crown prosecutes.

The charge against the Defendant *George Lidwell* is for sending a challenge to, and moving, provoking and exciting Colonel *Dering* to fight a duel with him, *George Lidwell*, and the charge against *Thomas Prior* is, that he delivered that challenge and endeavoured to move, incite and provoke Colonel *Dering* to fight with *George Lidwell*. These charges are stated in various forms in the different counts of the information.—(Here his Lordship stated the several counts to the Jury.) You will observe, Gentlemen, that there is no count for challenging the Colonel to fight *John Lidwell*.

With regard to the three first counts in the information, as against *Thomas Prior*, which charge the delivery a challenge, it does not appear to me that there is evidence to support any of them: it appears that Mr. *Prior* offered a letter to Colonel *Dering*, but it was not received nor were the contents of it disclosed. The other counts charge that *Thomas Prior* did move, provoke and incite *Cholmeley Dering*

Dering to fight a duel with *George Lidwell*, and that he did endeavour to move, incite and provoke *Cholmeley Dering* to challenge *George Lidwell* to fight with him. If you, Gentlemen, should upon the evidence be convinced, that *Mr. Prior* either did excite Colonel *Dering* to fight with *Mr. George Lidwell*, or did endeavour to provoke him to challenge *George Lidwell* to fight, then you will find *Mr. Prior* guilty.

With respect to the charges against *Mr. George Lidwell*, they are simple; that he did challenge Colonel *Dering* to fight, and that he did provoke him to challenge *George Lidwell* to fight.

Having stated the charge, I will now, read from my notes the evidence which has been given. (*Here his Lordship minutely and accurately recapitulated the evidence, and made occasional observations upon it.*) Gentlemen, if any credit be due to Colonel *Dering*, of that you only are to judge, it does appear that in consequence of the dismissal of *Mr. John Lidwell* from the regiment he did conceive a resentment against Colonel *Dering* and all his officers, several of whom he insulted in their country quarters; that *Mr. Prior* in the morning of the 8th of September, contrived to procure an interview with Colonel *Dering*, and delivered a message from *Mr. George Lidwell*, calling on the Colonel to give satisfaction to his brother *John*; and Colonel *Dering* having declined the invitation, *Mr. Prior* then desired leave to deliver a letter, which, when Colonel *Dering* refused to receive, *Mr. Prior* desired to read aloud.

It appears that in the evening of that very day, two letters were left at Col. *Dering's* lodgings, in *Tullamore*, where *Mr. Prior* and *Mr. George Lidwell* continued a great part of the day;—one of these letters imports to be from *George Lidwell* to Col. *Dering*; the other to Col. *Dering* from *Mr. Prior*.

Upon these letters the case chiefly turns: That signed "*George Lidwell*" is in its language most highly provoking:—You are first to consider, whether it be the hand-writing of the Defendant *Lidwell*;—when we over-ruled the objection to its being read, we did not decide that it was written by *Lidwell*; we determined no more than that there was sufficient evidence to permit it to be read; but it is for you to determine, whether it be the hand-writing of the Defendant *Lidwell*; if it be, then you will consider whether it was
sent

sent by *Lidwell*, and with what view, whether to challenge Colonel *Dering*, or to provoke Colonel *Dering* to challenge the writer. As to the sending of the letter, you will recollect the circumstances sworn to by Mr. *Dering*; if you give him credit, *Prior* in the morning brought a message from *Lidwell*, and *Lidwell*, by his letter, shews *Prior* to be his messenger; he refers to him as the person to receive any commands Colonel *Dering* may have for him. He remained in *Tullamore* a great part of the day, and the letter is left on the Colonel's table, with the *Tullamore* mark on it. In the morning, Colonel *Dering* had refused to receive a letter;—you will consider, Gentlemen, if you believe *Lidwell* wrote the letter, whether there can be a doubt who sent it, and why it was sent in this manner; whether it be not connected with the transaction of the morning, and whether if it was written, it was not sent by the Defendant *Lidwell*; if you be satisfied, that it was written and sent by him, you are lastly to consider its meaning and object: was it a challenge, or a provocation to a challenge? If either, the Defendant is guilty.

Consider the language of the letter, and if it be doubtful, compare it with the conduct of the writer, and see if it affords any interpretation—the message sent in the morning, the behaviour of the Defendant on the parade, his repeated insults offered to Colonel *Dering*.—These facts (if you credit them) may serve as a clue to explain (if it need explanation) the object the Defendant had in view. If on the whole, you believe Mr. *Lidwell* did not write the letter you ought to acquit him; for he is not charged with the transaction in *Dublin*; if you believe he did write and send it with either of the views imputed, you should find him guilty.

With respect to Mr. *Prior*, you are to consider whether he sent, or carried a message inciting Colonel *Dering* to fight *George Lidwell*, or to provoke him to challenge Mr. *Lidwell* to fight. In the morning he went with a message from the Defendant *Lidwell*, and he offered to deliver and read a letter from *Lidwell*—he appeared with *Lidwell* on the parade; in the afternoon the letters were found with the *Tullamore* post-mark on the table, one from *Lidwell* (if you believe it his hand-writing) in the most provoking language, saying “Captain *Prior* who undertakes the delivery of “this will receive any commands you may have to me in consequence.”

The other letter, proved to be *Prior's* writing, informs Colonel *Dering*, that he, *Prior*, will wait in town till three o'clock; that the Colonel may address any commands he may have for Mr. *Prior* in consequence of a letter he has received from Captain George *Lidwell*.

Compare this letter with *Lidwell's* and see whether *Prior* was the knowing and willing messenger in this affair—the letters refer the one to the other; see whether *Lidwell* does not avow *Prior* and see whether *Prior* does not avow himself; and consider too, whether *Prior's* conduct in the morning is not connected with the delivery of the letter in the evening; and indeed, whether there is strong ground to believe that the letter left on the Colonel's table be not the letter that *Prior* offered in the morning—But, Gentlemen, you are to judge upon the evidence, if you have a doubt that Mr. *Prior* brought a message, knowing its import to Colonel *Dering* to fight the Defendant George *Lidwell* (for the message from *John* is not before you) must acquit;—if on the other hand you are satisfied that he knew the object of the letter he carried, and that that letter was an invitation or a provocation to fight—you must find him guilty.

Mr. JUSTICE DOWNES, Mr. JUSTICE CHAMBERLAINE and Mr. JUSTICE DAY, concurred in, and did not add any thing to, the charge of the Chief Justice.

The Jury, before they retired, applied to be furnished with a specification of the Counts in the information,—and accordingly the Clerk of the Crown gave the Jury separate abstracts;—one containing the first seven counts against Mr. *Lidwell*, the other containing the remaining seven counts against Mr. *Prior*: and after some deliberation, a verdict was returned, finding Mr. *Lidwell* guilty upon the sixth count of that part of the information respecting him and Mr. *Prior* guilty of the fifth count of the information, respecting him and each of the said Defendants not guilty of the residue of the said information.

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1/17/06

